

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/026,083	KAPLAN ET AL.	
	Examiner Karen Le	Art Unit 2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to patent application filed on 6/21/01 and Examiner's amendment.
2.  The allowed claim(s) is/are 1-21.
3.  The drawings filed on 21 June 2001 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Attorney Henry Brendzel, Registration Number 26844 on 12/23/03.
3. The application has been amended as follows, by an Examiner's amendment.  
Abstract, line 3, "shard" should be --shared--
4. Claims 22-24 have been cancelled.

End of amendment.

***Election/Restrictions***

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, drawn to subject matter wherein a failure or call congestion exceeding a predetermined threshold is detected on a communications links, classified in class 379, subclass 221.03.
- II. Claims 22-24, drawn to allocating usage of a communication channel to regulate the amount of data entering a multiplex network so as to prevent an overloading, classified in class 370, subclass 230.

The inventions are distinct, each from the other because of the following reasons:

6. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the method to establish a connection over a path in network proceed along a predetermined algorithm the method either services the request, declines to service the request, or services the request after dropping an established connection. The subcombination has separate utility such as channel assignment techniques to regulate the amount of data entering a multiplex network so as to prevent an overloading.

7. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II, restriction for examination purposes as indicated is proper.

8. During a telephone conversation with Mr. Henry Brendzel on August 16, 2004 a provisional election was made without traverse to prosecute the invention of group I, claim 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claim 22-24 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

## REASON FOR ALLOWANCE

10. Claims 1-21 are allowed.
11. The following is a statement of reasons for allowance:

Riihinens et al (U. S. 6,731,739) teaches a telecommunications network has a unit and technique to alleviate congestion on a congested link as can occur, e.g., when a new connection seeks admission to the network. The congestion avoidance technique ascertain, from a set of candidate connections, a best candidate to route in order to avoid the congestion.

Petersen et al (U. S. 6,606,380) teaches the method comprises receiving call signaling in a node and routing the call in accordance with the call signaling. If congestion is met, it is decided whether an alternative routing is allowed in dependence on parameters associated with the call and the node and the call is routed in accordance with such allowed alternative routing. If congestion is met again or no alternative is allowed, it is decided if the call, it is decided if the call should be released or subject to crankback, dependent on parameters associated with said call and node. By receiving indicators with the call signaling, indicating the types of alternative routing performed in preceding nodes and using said indicators as parameters for the above decisions, and updating said indicators for each call whenever alternative routing is performed for said call, the alternative routing can be controlled in an improved and simple manner.

However, the prior art of record fails to teach, or render obvious, alone or combination, a method that alleviates congestion problems in prior art networks by

insuring that unused capacity will always exist in elements of a network that are resources which are shared by a plurality of users and which, consequently, can be overloaded. In response to each a request to establish a connection over a path in the network, pursuant to a predetermined algorithm the method either services the request, declines to service the request, or services the request after dropping an established connection. When unused capacity on the path is above a preselected level, all requests are serviced. When unused capacity falls below a preselected threshold, a probabilistic approach is taken as to whether to service the request or not, and as whether to drop an existing call in order to service the request.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen Le whose telephone number is 703-308-4998. The examiner can normally be reached on M-F 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad F. Matar can be reached on 703-305-4731. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

Karen Le  
KLL  
August 17, 2004

*Benny Q. Tieu*  
BENNY TIEU  
PRIMARY EXAMINER  
A.U. 2642